

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE COMMISSIONER OF HUMAN SERVICES

In the Matter of the Temporary  
Immediate Suspension of the  
License of Deanna Swedin to  
Provide Family Child Care

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
RECOMMENDATION**

This matter came on for hearing by Administrative Law Judge Kathleen D. Sheehy on February 23, 2005, at the Dakota County Attorney's Office, 1560 Highway 55, Hastings, MN 55033. The record remained open until March 2, 2005, to allow the parties to submit written argument. No written submissions were received.

Margaret M. Horsch, Assistant Dakota County Attorney, 1560 Highway 55, Hastings, MN 55033, appeared for the Minnesota Department of Human Services (Department) and Dakota County Social Services (DCSS).

Anthony Ho, Esq., 14501 Granada Drive, Suite 200, Apple Valley, MN 55124, appeared for Deanna Swedin (Licensee).

**NOTICE**

This report is a recommendation, not a final decision. The Commissioner of Human Services will issue a final decision after reviewing the administrative record, and he may adopt, reject or modify the Administrative Law Judge's Findings of Fact, Conclusions, and Recommendations. The parties have 10 calendar days after receiving this recommended decision in which to file any exceptions to the report with the Commissioner.<sup>[1]</sup> Parties should contact the office of Kevin Goodno, Commissioner, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155, 651-296-2701 to find out how to file exceptions. Since the Commissioner must issue his final order within 10 working days from receipt of the Administrative Law Judge's recommended decision,<sup>[2]</sup> the parties are requested to file any exceptions as soon as possible.

Under Minn. Stat. § 14.62, subd. 1, the Department is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

## STATEMENT OF ISSUE

Should the temporary immediate suspension of Deanna Swedin's family child care license remain in effect because there is reasonable cause to believe that there is an imminent risk of harm to the health, safety or rights of children in her care?

The Administrative Law Judge concludes the temporary immediate suspension should remain in effect pending the Commissioner's final order.

Based upon the proceedings herein, the Administrative Law Judge makes the following:

## FINDINGS OF FACT

1. The Licensee has been licensed to provide day care since February 2000. She has been an excellent provider and is highly regarded by the parents of children in her care.<sup>[3]</sup>

2. In the early morning hours of November 14, 2004, the Licensee and her husband returned home from a neighborhood party. Their children were sleeping upstairs. The husband was intoxicated. He became enraged at the family's dog for chewing on some items in their home. He began shocking the dog by continuously pressing the control to its shock collar. As the Licensee removed the collar from the dog, her hand received the shock as well. She took the dog outside, then brought it downstairs to the lower-level bathroom where the dog slept. The Licensee then went upstairs to her bedroom. While she was upstairs, her husband went down to the bathroom and shot the dog three times with a 9 mm pistol. After it died, he put the dog in the back of his pick-up truck. The Licensee heard the shots from upstairs. She called a friend, who in turn called the Eagan police. When the police arrived, the husband admitted shooting the dog.<sup>[4]</sup>

3. The Licensee's husband was arrested and later charged with reckless discharge of a firearm in a municipality, in violation of Minn. Stat. § 609.66, subd. 1a(a)(3); and maltreatment of animals, in violation of Minn. Stat. § 343.21, subds. 7 & 9(d).<sup>[5]</sup> Three guns were found on the premises, all in the garage. The handgun used to shoot the dog was found in a blue case on top of a refrigerator near the entrance to the house; another handgun, which was loaded, was found in a soft-sided, unlocked case inside a cabinet in the back of the garage; and a rifle was found in a black case on the freezer in the garage.<sup>[6]</sup>

4. On Monday November 15, 2004, the Licensee called her licensing worker to report the incident. The Licensee advised the worker that whenever her husband was released from jail he would stay with his parents or another relative and would not return home.

5. In statements made to the police over the next few days, the Licensee stated that her husband had a drinking problem, had gone through chemical dependency treatment in 1998 but had been drinking for the past two years, and tended

to become a different person when he drank. She also said he was experiencing a variety of stresses at the time and that she was concerned about him harming himself when he was released from jail.<sup>[7]</sup>

6. By letters dated November 17, 2004, Dakota County Social Services notified the Licensee and her husband that he was disqualified based on the county's determination, by a preponderance of the evidence, that he had recklessly discharged a firearm in a municipality.<sup>[8]</sup> This offense is a disqualification factor under Minn. Stat. § 245C.15, subd. 2. The Licensee and her husband received the disqualification notices on February 18, 2004.<sup>[9]</sup>

7. Based on advice from her licensing worker, the Licensee requested and received a restraining order precluding her husband from entering the home.<sup>[10]</sup> She also took other actions suggested by her licensing worker, including programming 911 into the speed dial of her cell phone and keeping the doors to her home locked at all hours.

8. On November 22, 2004, Dakota County Social Services recommended a temporary immediate suspension of the Licensee's childcare license.<sup>[11]</sup>

9. On November 22, 2004, the Department issued an order of temporary immediate suspension.<sup>[12]</sup>

10. The Licensee filed a timely appeal of the immediate suspension order. On December 2, 2004, the Department issued a Notice of and Order for Hearing scheduling the hearing to take place on December 16, 2004.

11. On December 14, 2004, the County notified the Administrative Law Judge by telephone that the parties jointly requested more time to prepare for the hearing and asked that the hearing be continued to January 25, 2005. On December 20, 2004, Dakota County notified the Administrative Law Judge that the Licensee had surrendered her license and advised DCSS that she no longer intended to continue providing child care. DCSS advised her that she had to withdraw her request for hearing in writing. No written withdrawal of the request for hearing was received. When contacted by the Administrative Law Judge shortly before the January 25, 2005 hearing date, the Licensee indicated she had changed her mind and wished to proceed with the hearing. After consultation with the Licensee's counsel, the hearing was rescheduled to take place on February 23, 2005.

12. The Licensee's husband did not seek reconsideration of the disqualification.

13. On December 27, 2004, the Licensee's husband pleaded guilty to amended charges of mistreating an animal, domestic assault, and negligent storage of a firearm in violation of Minn. Stat. § 609.666, subd. 2.<sup>[13]</sup>

14. On January 14, 2005, after completion of a child protection investigation, the Licensee's husband returned home and has lived there since that time. He is

participating in an alcohol program, sees a psychiatrist once a week, takes an antidepressant medication, goes to domestic violence counseling, and has not consumed alcohol since this incident occurred.

Based upon the above Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS OF LAW**

1. The Administrative Law Judge and the Minnesota Department of Human Services have authority to consider and rule on the issues in this contested case hearing pursuant to Minn. Stat. §§ 14.50, 245A.07, and 245A.08.

2. The Department gave proper notice of the hearing, and all relevant substantive and procedural requirements of law or rule have been fulfilled.

3. Pursuant to Minn. Stat. § 245A.07, subd. 2, “[i]f the license holder’s actions or failure to comply with applicable law or rule, or the actions of other individuals or conditions in the program pose an imminent risk of harm to the health, safety, or rights of persons served by the program, the commissioner shall act immediately to temporarily suspend the license.”

4. The scope of this hearing is limited solely to “whether the temporary immediate suspension should remain in effect pending the commissioner’s final order under section 245A.08.” The burden of proof in expedited hearings under this subdivision shall be limited to the commissioner’s demonstration that reasonable cause exists to believe that the license holder or the actions of other individuals or conditions in the program pose an imminent risk of harm to the health, safety, or rights of persons served by the program.<sup>[14]</sup>

5. The Department demonstrated reasonable cause to believe that the actions of the Licensee’s husband pose an imminent risk of harm to the health, safety, or rights of persons served by the program, and the temporary immediate suspension should remain in effect pending the Commissioner’s final order.

6. The attached Memorandum is incorporated by reference.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS RESPECTFULLY RECOMMENDED that the temporary immediate suspension of the license of Deanna Swedin to provide family child care be **AFFIRMED**.

Dated this 15th day of March, 2005

/s/ Kathleen D. Sheehy

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KATHLEEN D. SHEEHY  
Administrative Law Judge

Reported: Tape recorded (4 tapes). No transcript prepared.

### MEMORANDUM

The Department has the burden of showing that there is reasonable cause to believe that the health, safety, or rights of the children in care are in imminent danger. Requiring only a showing of “reasonable cause” is intended to ensure that vulnerable children are protected until there can be a full hearing and a final determination. It is commendable that the Licensee’s husband has taken serious steps to address the problems that led to this incident; however, the incident occurred recently, and the contributing factors—alcoholism, depression, and extreme frustration over personal problems—are not so quickly resolved. The risk of harm to daycare children still exists, regardless of the Licensee’s promise that he will not be present in the home during day care hours. Furthermore, the husband has been disqualified and did not appeal the disqualification. Pursuant to Minn. R. 9502.0335, subp. 6D, the presence of a disqualified person living in the home is independent cause for suspension of the day care license.

K.D.S.

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<sup>[1]</sup> Minn. Stat. § 14.61.

<sup>[2]</sup> Minn. Stat. § 245A.07, subd. 2a(b).

<sup>[3]</sup> Exs. 8-11, 13-21.

<sup>[4]</sup> Ex. 4, Incident Reports dated November 14, 2004, at 2-4; November 19, 2004, at 1.

<sup>[5]</sup> Ex. 1.

<sup>[6]</sup> Ex. 4, Incident Report dated November 14, 2004, at 6-7.

<sup>[7]</sup> Ex. 4, Incident Report dated November 14, 2004, at 5-6; Incident Report dated November 19, 2004, at 1-2.

<sup>[8]</sup> Exs. 2 & 3.

<sup>[9]</sup> Testimony of Laurie Haenke.

<sup>[10]</sup> Testimony of Joan Visnovec.

<sup>[11]</sup> Ex. 4.

<sup>[12]</sup> Ex. 5.

<sup>[13]</sup> Ex. 7 at 1-4.

<sup>[14]</sup> Minn. Stat. § 245A.07, subd. 2a.